



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Norden Service Company, Inc.
File: B-231575.2
Date: August 19, 1988

DIGEST

Protest is dismissed where essential issue raised has already been decided by the General Services Administration Board of Contract Appeals and remaining issues are either untimely, academic or concern an affirmative determination of responsibility, which the General Accounting Office generally does not review.

DECISION

Norden Service Company, Inc., protests the award of a contract for Automated Weather Observing Systems (AWOS) under invitation for bids (IFB) No. DTFA01-88-B-06742, issued by the Federal Aviation Administration (FAA). The IFB requires FAA certification of the AWOS system.

We dismiss the protest.

Bids were opened on March 24, 1988. In a letter dated April 28, Norden, the third low bidder, protested to the contracting officer that award should not be made to Qualimetrics, Inc., the low bidder, or ARTAIS, Inc., the second low bidder, on the grounds that: (1) bids submitted by both firms were based, in part, on non-certified components and therefore were nonresponsive; and (2) neither firm is a responsible bidder for the type of procurement in issue. The FAA found Qualimetrics' low bid to be responsive and the firm responsible.

On May 20, Norden received notice of the agency's denial of its protest and on May 31 filed a protest with our Office, repeating its allegations concerning bid responsiveness and the responsibility of Qualimetrics and ARTAIS as bidders in this procurement. In addition, the protester argued that the use of an IFB to procure the AWOS was improper under applicable regulations and statutes. On June 3, ARTAIS, the second low bidder, filed a protest concerning this procurement with the General Services Administration Board of

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Contract Appeals (GSBCA) in which ARTAIS raised the issue of whether Qualimetric's bid was responsive to the terms of the IFB.^{1/} By decision dated August 5, 1988, the GSBCA found that the Qualimetrics bid met the solicitation requirements and denied the ARTAIS protest.

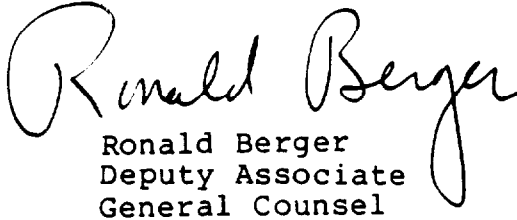
We have previously decided that once the GSBCA has exercised jurisdiction over a procurement, any protest to this Office involving the same procurement issue will be dismissed without consideration of the merits in deference to the binding effect of a GSBCA protest decision on the agency involved, subject to appeal to the United States Court of Appeals for the Federal Circuit. See Resource Consultants, Inc., 65 Comp. Gen. 72 (1985), 85-2 CPD ¶ 580. For us to proceed otherwise would, in effect, make us an appellate body reviewing the GSBCA's decision, a result inconsistent with the legislative intent of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 and 40 U.S.C. § 759(f) (Supp. IV 1986), the statutory basis for our jurisdiction and the Board's. Norden's protest alleges that the equipment offered by Qualimetrics was not qualified in accordance with the terms of the solicitation; the Board specifically found that Qualimetrics' bid met the requirements of the solicitation for qualification of its proposed system. See ARTAIS, Inc., GSBCA No. 9508-P, Aug. 5, 1988 at page 10. Accordingly, we will not consider the issue.

The Board did not address issues raised concerning Qualimetrics' responsibility, ARTAIS' responsibility and the responsiveness of ARTAIS' bid, or the use of the IFB format to procure the AWOS. However, our Office will not review an affirmative determination of responsibility unless the protester shows possible bad faith or fraud on the part of the procuring officials, or shows that the awardee failed to meet definitive responsibility criteria set out in the solicitation. 4 C.F.R. § 21.3(m)(5) (1988); Process Equipment & Supply Co.--Reconsideration, B-231384.2, June 16, 1988, 88-1 CPD ¶ 578. There has been no such showing here. Moreover, since it is clear that ARTAIS is not in line for award, the allegations concerning that firm and its bid are academic. See Honeycomb Company of America, B-225685, June 8, 1987, 87-1 CPD ¶ 579.

^{1/} We initially dismissed Norden's protest to our Office because ARTAIS' protest against the award was pending before the General Services Administration Board of Contract Appeals. Norden Service Company, Inc., B-231575, July 5, 1988, 88-2 CPD ¶ ____.

Lastly, regarding the protester's objection to the IFB format, this issue is clearly untimely raised as it concerns an alleged solicitation defect apparent from the face of the solicitation that was not protested to this Office or to the agency prior to bid opening. 4 C.F.R. § 21.2(a)(1); see Accurate Mechanical Inc., B-227847.2, June 22, 1988, 88-1 CPD ¶ 595.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel